

Exhibit B

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY AND STATE FARM FIRE AND CASUALTY
COMPANY,

PLAINTIFFS,

v.

METRO PAIN SPECIALISTS P.C., ET AL.

DEFENDANTS.

Case No.: 1:21-cv-05523 (MKB)(PK)

**DECLARATION OF PETER A. STROILI IN SUPPORT OF MOTION
FOR LEAVE TO AMEND COMPLAINT TO ASSERT COUNTERCLAIM**

Peter A. Stroili, declares and states as follows:

1. I am an attorney with Kaufman Dolowich & Voluck LLP, counsel for Defendants Metro Pain Specialists P.C. (“Metro Pain”), Leonid Shapiro, M.D. (“Dr. Shapiro”) and Tri-Borough NY Medical Practice P.C. (“Tri-Borough”) (collectively, the “Metro Pain defendants”). I submit this Declaration in support of the Metro Pain defendants’ motion for leave to amend their Answer to the operative complaint (currently, the First Amended Complaint) to assert a Counterclaim.

2. The Counterclaim is based on documents and information from the investigation files produced by State Farm. Not until January 13, 2023, did State Farm provide its “first production” of its “Project Files,” i.e., Investigation Files, which purportedly led to the filing of and the allegations in the First Amended Complaint. A copy of the email sent by Plaintiffs’ counsel, on January 13, 2023, to all counsel in this action producing the “first production of State

Farm's Project files" is annexed as **Exhibit A**. For several weeks thereafter, State Farm's made additional productions of its "Project" files.

3. On April 1, 2022, the Metro Pain defendants served their First Set of Requests for Production of Documents (the "Requests") and Interrogatories to State Farm. The production of State Farm's investigation (i.e., "Project") files were called for by several document requests in the Metro Pain Defendants' first set of document requests to Plaintiffs, served in April 2022.

4. On June 20, 2022, State Farm served its Objections and Responses to the Requests. ("Responses," annexed as **Exhibit B**). In its Responses, State Farm repeatedly stated that the responsive documents "can be found in ...the non-privileged portions of the MCI project files pertaining to the conduct of the defendants in this action as set forth in Plaintiffs' Complaint." (Ex. B: Responses to Request Nos. 1-7, 9-11, 13-19, 22, 24, 27-28, 32-33, 35, 36, 40-41).

5. In August 2022, State Farm produced its first of twenty-two tranches of documents, constituting over two million pages, which it produced in piecemeal fashion over the next several months before producing any of its "Project" files.

6. On November 22, 2022, after having received yet "another supplemental production from State Farm," Kevin Windels of this firm as counsel for the Metro Pain defendants sent an email (annexed as **Exhibit C**) to counsel for State Farm, Christopher Cook, noting: "Despite this, based on our review of what has been produced to date, it appears that State Farm has still not produced all of the responsive documents [including its "Project files] it owes in response to our document requests."

7. On November 30, 2022, counsel for State Farm, Christopher Cook send an email in response to Mr. Windels (annexed as **Exhibit D**), in which he indicated that State Farm

would produce “the vast majority of outstanding records by December 16,” including its “investigative [i.e., Project] files.”

8. However, as stated in the deficiency letter, dated December 27, 2022 (annexed as **Exhibit E**), sent by counsel for the Metro Pain defendants to Mr. Cook:

Despite indicating in your November 30, 2022 email to Kevin Windels of KDV that State Farm would produce “the vast majority of outstanding records by December 16,” including “investigative files,” the vast bulk of State Farm’s production of documents to date appears to consist almost entirely of patient claim files. There do not appear to be any documents, such as internal SIU correspondence, investigation reports, audits, accounts, etc. regarding State Farm’s investigation which presumably resulted in the Complaint’s allegations.

9. On January 13, 2023, State Farm finally provided its “first production” of its “Project Files,” i.e., Investigation Files, which purportedly led to the filing of and the allegations in the First Amended Complaint filed on December 12, 2021. State Farm thereafter made additional productions of its Project files over the next several weeks.

10. After State Farm finally began to produce the Project files on January 13, 2023, counsel for the Metro Pain Defendants immediately proceeded to undertake a diligent search, review, and analysis of the “Project” files.

11. Meanwhile, on January 9, 2023, State Farm made a motion for leave to file a Second Amended Complaint (ECF No. 309) which sought to add 17 new defendants and expand upon the allegations in the First Amended Complaint against the Metro Pain Defendants, among other Defendants in this action. At page 11 of State Farm’s motion, State Farm accurately stated, “[t]he Parties are still completing written discovery and only two depositions have been taken.”

12. On January 24, 2023, the parties filed a joint motion to extend the discovery schedule (ECF No. 321). On February 2, 2023, Magistrate Judge Kuo granted the parties’ joint

motion to amend the scheduling order, ruling: “The parties are directed to file a revised proposed discovery plan within seven (7) days of a decision on the Motion for Leave to File A Second Amended Complaint.” The Motion for Leave to File A Second Amended Complaint remains pending.

13. The parties, awaiting the Court’s ruling on the State Farm’s motion to amend, are still in an early written discovery stage of litigation. State Farm has indicated that it intends to take some thirty depositions. Only one deposition has been taken since State Farm filed its motion to amend in January of this year.

14. On June 5, 2023, State Farm filed with the Court the parties’ ESI Discovery Protocol negotiated by the parties for the production of electronic discovery. (ECF no. 368). On July 5, 2023, State Farm served its Objections and Responses to the Metro Pain Defendants Second Set of Requests for Production of Documents, indicating that it will be producing its electronic discovery, i.e., email correspondence, which it has still not produced, from its Project Files, “in a manner consistent with” the ESI protocol.

15. On July 5, 2023, State Farm served its Objections and Responses to the Metro Pain Defendants Second Set of Requests for Production of Documents, indicating that it will be producing its electronic discovery, i.e., email correspondence, which it has still not produced, from its Project Files, “in a manner consistent with” the ESI protocol.

16. On July 26, 2023, I sent an email to counsel for State Farm, “to inform [them] of our intent to file within the next week a motion to amend the operative complaint to assert a counterclaim on behalf of the Metro Pain Defendants” and to ask whether State Farm will consent to the motion. On Friday July 28, 2023, we had a follow-up discussion with counsel for State Farm.

17. Today, August 2, 2023, counsel for State Farm, Christopher Cook, in an email to me, indicated that State Farm does not object to the motion, stating:

State Farm does not object to the Metro Pain Defendants' motion for leave to supplement their answer to assert the counterclaims discussed. Should the Court grant the Metro Pain Defendants' motion for leave, State Farm reserves its right to address any asserted counterclaims substantively in a motion to dismiss.

I declare under penalty of perjury the foregoing is true and correct to the best of my knowledge and belief.

Executed this 2nd day of August 2023 in New York, New York.

/s/ Peter A. Stroili

Peter A. Stroili